



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 6423-98
23 November 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 15 March 1985, a medical board gave you a diagnosis of post traumatic seizure disorder. The medical board report indicates that the seizures were residual to a severe head injury you incurred when you fell down a flight of stairs while intoxicated. On 14 June 1985, the Physical Evaluation Board determined that you were unfit for duty because the seizure disorder, which was not ratable because it was incurred as a result of your own intentional misconduct or willful neglect. You accepted those findings on 24 June 1985, and you were discharged from the Marine Corps on 8 August 1985, without entitlement to disability benefits administered by the Department of the Navy. Following your discharge, the Department of Veterans Affairs made an independent determination that your seizure disorder was not incurred in the line of duty, and denied your request for disability compensation.

The Board noted that an injury or disease incurred as a result of a service member's own misconduct is classified as not incurred in the line of duty, even though the service member may have been in a duty status when the condition arose. In the absence of evidence which

demonstrates that the finding of intentional misconduct/willful neglect which was made in your case is erroneous or unjust, the Board was unable to recommend any corrective action in your case. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director